



## आयुक्त का कार्यालय, अपीलस(

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 26305065-079 : टेलिफैक्स 26305136 - 079 :



### स्पीड पोस्ट

क फाइल संख्या : File No : V2(73)29/Ahd-South/2019-20

11245-49

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-042-2019-20

दिनांक Date : 20-09-2019 जारी करने की तारीख Date of Issue 23.09.2019

श्री गोपीनाथ आयुक्त (अपील) द्वारा पारित

Passed by Shri. Gopi Nath, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 4/AC/Maharaj Singh/Div-I/11-12 दिनांक: 05.07.2011 issued by Assistant Commissioner, Div-Div-I, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Shree Jalaram Founders  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

#### Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A.) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

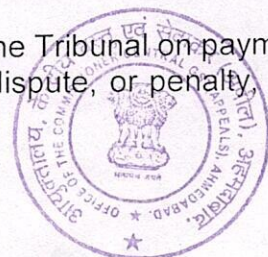
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute."



**ORDER-IN-APPEAL**

This order arises out of an appeal filed by M/s Shree Jalaram Founders, Jogeshwari Industrial Estate, Bh. CTM Highway Back Road, Amraiwadi, Ahmedabad (in short 'appellant') against Order-in-Original No.4/AC/Maharaj Singh/Div-I/11-12 dated 05.07.2011 (in short 'impugned order') passed by the Assistant Commissioner, Central Excise, Division-I (Rakhial), Ahmedabad-I (in short 'adjudicating authority').

2. Brief facts of the case are that during the audit of the appellant's unit by the department, it was observed that they had wrongly availed Cenvat credit of service tax paid on Outward Freight under GTA category which culminated into issue of the SCN V.73/3-5/DA/Jalaram/10-11 dated 01.12.2010 which was adjudicated by the adjudicating authority vide impugned order wherein the demand of duty of Rs.92,986/- was confirmed under Section 11A of the Central Excise Act, 1944 (in short 'the Act') read with Rule 14 of the Cenvat Credit Rules, 2004 (in short 'CCR'); charged interest on the demand confirmed under Section 11AB of the Act ibid and imposed a penalty of Rs.10,000/- under Rule 15(3) of CCR.

3. Aggrieved with the impugned order, the appellant filed the present appeal mainly on the grounds that:

- i) As per definition of input service existed prior to 01.03.2008, credit of service tax paid on outward transportation was admissible for clearance of final products from the place of removal;
- ii) Even after the amendment of definition of input service with effect from 01.03.2008, credit of service tax on outward transportation is admissible in view of the decision of the Tribunal's larger Bench in the case of M/s ABB Ltd. as it is held therein that outward transportation service activities is activity relating to business and hence definition of input service can not be read as limited upto place of removal;
- iii) In the light of ABB's decision, the amendment made in the definition of input services with effect from 01.03.2008 would have no effect in limiting the credit in respect of outward transportation from place of removal;
- iv) Case laws in the case of M/s ABB Ltd. 2009(15) STR 23 (Tri-LB) and Mahindra Sar Transmission Pvt. Ltd. 2010(250) ELT 373 (Tri-Ahd) support their contention; and
- v) The ownership of goods rests with the appellant till delivery at customer's premise and the risk was borne by them for loss/damage of goods in transit and they are receiving the payment of goods from the customers after deduction of the price of goods, damaged/lost, if any.

4. A hearing in the matter was held on 11.09.2019. Shri Amarjeet Jaynath Varma, Accountant appeared on behalf of the appellant and reiterated the submissions of appeal memo for consideration.



5. I have carefully gone through the facts of the case, appeal memorandum submissions made at the time of personal hearing and evidences available on records. I find that the main issue to be decided is whether the appellant is entitled to Cenvat credit of service tax paid on Outward Freight under GTA category or otherwise during the relevant period. Accordingly, I proceed to decide the case on merits.

6. Prima facie, I find that the adjudicating authority vide impugned order has confirmed the demand on the ground that said Outward Freight services are not 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004 being services availed beyond the place of removal. Hence, aggrieved with the impugned order, the appellant has preferred the present appeal. The period covered in the present appeal is from **August, 2006 to March, 2010**. Since the definition of input services under the CCR was amended with effect from 01.04.2008, the issue under consideration in the appeal covers the period both prior to and after the said amendment.

7. In this regard, I find that the issue involved for the period prior to 01.04.2008 was already settled by the Hon'ble CESTAT, Bangalore Larger Bench in the case of ABB Ltd. Vs. CCE & ST, Bangalore [2009(15) STR-23(Tri.LB)]. However, in the appeal before the High Court of Karnataka by the department against the said judgment of the CESTAT, the Hon'ble High Court of Karnataka upheld the decision of the Larger Bench of the Tribunal. As against this order of the High Court of Karnataka, the department filed Civil Appeal No.11402/2016 before the Hon'ble Supreme Court of India. This civil appeal was tagged with Civil Appeal No.11710/2016 filed by CCE, Belgaum Vs. M/s. Vasavadatta Cements Ltd. The Hon'ble Supreme Court of India vide judgment dated 17.01.2018 reported in 2018(11) GSTL 3 (SC) on the subject matter has categorically discussed the words and phrase "from the place of removal" as it stood in the definition of 'input service' in Rule 2(l) ibid prior to amendment w.e.f. 01.04.2008 and held as under:

*"Cenvat credit - Input services - GTA services - Outward Transportation of manufactured product - Place of removal - Definition of input services as it existed prior to amendment in 2008, included term "from place of removal" - Certainly it has to be upto a certain point - Thus GTA services used for outward transportation of goods from place of removal, i.e., factory gate up to first point of delivery viz. a Depot or a Customer's premises covered under input services - However, post 1-4-2008 amendment, said term having been substituted by term "upto the place of removal", credit beyond such place not admissible - There being no error in concurrent orders of CESTAT Larger Bench and High Court, impugned order sustainable - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 5, 6, 7, 8]"*

Department's appeal ~~dismissed~~/Assessee's appeal allowed



7.1 Following the above judgment of the Hon'ble Supreme Court of India, I hold that the appellant is eligible for availing Cenvat credit of service tax paid on the Outward Transportation service and accordingly allow the appeal filed by the appellant with consequential relief, if any, for the period covered prior to 01.04.2008. Consequently, to this extent the demand and interest confirmed vide impugned order is set-aside.

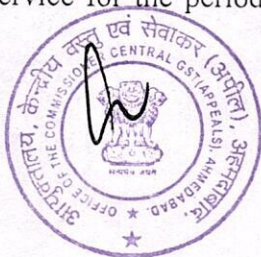
8. As regards the period covered post 01.04.2008, I find that the issue stand settled against the appellant in view of Hon'ble Supreme Court's Judgement dated 01.02.2018 in the case of Commissioner of Central Excise & S.T. Vs. M/s Ultra Tech Cement Ltd. [ 2018 (9) G.S.T.L. 337 (S.C)] wherein the Apex Court categorically hold that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible.

8.2 Regarding the appellant's contention at para 3(v) above, I find that the same is based on Para 8.2 of the Board's Circular No.97/8/2007-CX dtd.23.03.2007 which contains parameters for determining 'place of removal' for the goods cleared on FOR destination. The Hon'ble Supreme Court in its above referred decision in the case of Commissioner of Central Excise & S.T. Vs. M/s Ultra Tech Cement Ltd. [ 2018 (9) G.S.T.L. 337 (S.C)] has dealt with the applicability of the above referred Board's Circular for the period after the amendment of definition of input services in the CCR with effect from 01.04.2018 and has held as under:

*"11. As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd., 2007 (6) S.T.R. 249 (Tribunal) and M/s. Ultratech Cement Ltd., 2007 (6) S.T.R. 364 (Tri.- Ahd.). Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. However, the important aspect of the matter is that Cenvat Credit is permissible in respect of 'input service' and the Circular relates to the unamended regime. Therefore, it cannot be applied after amendment in the definition of 'input service' which brought about a total change. Now, the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal. It is this amendment which has made the entire difference. That aspect is not dealt with in the said Board's circular, nor it could be.*

*12. Secondly, if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2(l) of Rules, 2004 and such a situation cannot be countenanced."*

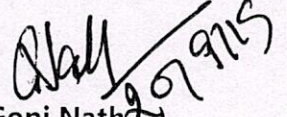
8.3 Therefore, by following the above judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Central Excise & S.T. Vs. M/s Ultra Tech Cement Ltd., I hold that the appellant is not eligible for availing Cenvat credit of service tax paid on the Outward Transportation service for the period from 01.04.2008 to March



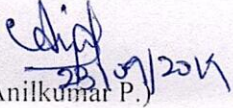
2010 and accordingly I reject the appeal filed by the appellant in respect of relief sought for the period from 01.04.2008 to March 2010.

9. Regarding penalty, I find that the penalty of Rs.10,000/- imposed vide the impugned order is not justified as the maximum penalty, if any, could be imposed on wrong availment of cenvat credit on input services was Rs.2,000/- for the period upto 27.02.2010 in terms of the provisions of Rule 15 of the CCR existed at the material time and the period covered in the present case is upto March 2010. Regardless of the above fact, since the issue involved interpretation of law, I do not find any merit in imposing any penalty in matter. Accordingly, I set aside the penalty imposed vide the impugned Order.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellant stand disposed off in above terms.

  
( Gopi Nath )  
Commissioner (Appeals)

Attested:

  
(Anilkumar P.)  
Superintendent(Appeals),  
CGST, Ahmedabad.



**BY SPEED POST TO:**

M/s Shree Jalaram Founders,  
Jogeshwari Industrial Estate,  
Bh. CTM Highway Back Road,  
Amraiwadi, Ahmedabad

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- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad South (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division-I, Ahmedabad South.
- (4) The Asstt. Commr(System), CGST , Ahmedabad South.  
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

